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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,480	06/21/2005	Mark Bernard Denys	APV31847	5517
77213	7590	10/09/2008		
Novak Druce + Quigg, LLP 1300 Eye Street, NW, Suite 1000 Suite 1000, West Tower Washington, DC 20005			EXAMINER	
			FOGARTY, CAITLIN ANNE	
			ART UNIT	PAPER NUMBER
			1793	
			MAIL DATE	DELIVERY MODE
			10/09/2008 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/520,480	Applicant(s) DENYS ET AL.
Examiner CAITLIN FOGARTY	Art Unit 1793

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,3,5-8,10,13-17.
Claim(s) withdrawn from consideration: 18-23.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Roy King/
Supervisory Patent Examiner, Art Unit 1793

Continuation of 11, does NOT place the application in condition for allowance because: the amended claims overcame the claim objection but did not change the scope of the claims. Therefore, the 35 U.S.C. 103(a) rejections set forth in the 6/23/2008 Final Rejection are maintained.

Applicant's arguments filed 9/23/2008 state that the position of the chute 22 of Klaassen is not a functional equivalent of the position of the chute in the presently claimed metallurgical vessel. However, Applicant has not submitted factual evidence to support this argument.

Applicant also argues that it would not be obvious to undo the effort of Klaassen to orient the lances as much as possible vertically by discharging from the lances at an acute angle further away from vertical from the lances. However, Fig. 2 of Klaassen shows that the lances (23) may be inclined from the vertical under a first acute angle with its end portion inclined towards the central axis of the metallurgical vessels. Additionally, col. 2 lines 36-46 of Klaassen teach that the lances are oriented as much as possible vertically as cited in Applicant's arguments. Therefore, the metallurgical vessel of Klaassen would be capable of having a configuration where the end portion of the lance is configured to direct the oxygen containing gas towards the central axis of the vessel under a second acute angle from the vertical which is greater than the first acute angle since the orientation of the lance may have an orientation such as in Fig. 2 or a more vertical orientation.

Applicant also argues that if the lances of Klaassen were adjustable it would not be necessary for the lances to be oriented as much as possible vertically in order to achieve the effect that the supply of oxygen to the vessel still takes place as much as possible in the same place above the slag layer as the level of slag varies. However, as recited in the 6/23/2008 Final Rejection, the lances of the vessel of Klaassen would be capable of being adjustable in height.

Finally, Applicant argues that the tuyeres 17 of Geiger are not capable of burning oxy-fuel. However as discussed in the 6/23/2008 Final Rejection, the Examiner relied on Fig. 5 of Geiger that discloses that the vessel of Geiger comprises a burner (19) that can burn natural gas and a natural gas/oxygen burner 12, not tuyeres 17.